

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SAYED H. ZAIDI,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No.: C 10-0698 PSG

**ORDER REMANDING CASE FOR
DETERMINATION ON PLAINTIFF'S
REQUEST FOR RECONSIDERATION**

On November 9, 2010, this court entered an Order Construing Complaint to Include a Cause of Action for a Writ of Mandamus, Denying in Part and Granting in Part Defendant's Motion to Dismiss, and Soliciting Further Briefing Regarding the September 28, 2010 Order to Show Cause. Defendant has now filed the requested supplemental brief and reiterated its admission that Plaintiff was improperly denied further administrative appeal rights regarding his request for reconsideration of his disability status between March 2005 and July 2007.¹ The undeniable effect of this was to deny Plaintiff's ability to exhaust his administrative remedies in a manner that would permit court review. Based on Defendant's admission and the file and proceedings herein,

¹ See Amended Supplemental Brief Responding to Court's November 9, 2010 Order Soliciting Further Briefing Regarding September 28, 2010, Order to Show Cause (Docket No. 40), at 3:15-18 and 8:5-6.

1 IT IS HEREBY ORDERED that, in accordance with this court's mandamus jurisdiction
2 under 28 U.S.C. § 1361, the case is remanded for a determination on Plaintiff's request for
3 reconsideration.² The determination shall be made no later than March 31, 2011 and should either
4 grant or deny the request. Plaintiff shall be immediately informed of the determination and afforded
5 any and all appeal rights, including a hearing, that follow under the agency's regulations.

6 Dated: March 3, 2011

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9 PAUL S. GREWAL
10 United States Magistrate Judge
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² Cf. *Jones v. Astrue*, 526 F. Supp.2d 455, 461 (S.D.N.Y. 2007) (exercising mandamus jurisdiction to order Appeals Council to perform properly its duty to review claimant's request).

1 **Notice of this filing was automatically mailed to counsel via the court's Electronic Case Filing**
2 **system.**

3 **A copy of this filing was mailed to:**

4 Sayed H Zaidi
5 81 Mihalakis St., Apt. #401
6 Milpitas, CA 95035

7 Dated: March 4, 2011

8 /s/ Chambers Staff
9 Chambers of U.S. Magistrate Judge Paul S. Grewal
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